

# EXHIBIT 3

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

In re: Bair Hugger Forced Air Warming  
Devices Product Liability Litigation.

MDL No. 15-2666 (JNE/DTS)


This Document Relates to:  
ALL ACTIONS

---

**AFFIDAVIT OF GABRIEL A. ASSAAD**

1. My name is Gabriel A. Assaad. I am over the age of 18, of sound mind and all the facts stated herein are within my personal knowledge and are true and correct.
2. I am an attorney licensed in the States of Texas, Virginia and the District of Columbia. I represent Plaintiffs in *In re: Bair Hugger Forced Air Warming* MDL. I am also co-counsel for Plaintiff John Petitta in Cause No. C-5130-16-A; *Petitta v. 3M Company et. al.*; pending in the 92<sup>nd</sup> Judicial District Court, Hidalgo County, Texas.
3. I have never “shared the Bair Paws exhibit (or contents thereof) with co-counsel in the *Petitta* matter” as alleged on page 7 of 3M’s Motion for Contempt. That allegation is false. Counsel for 3M has been made aware on several occasions that nobody from the MDL “shared the Bair Paws exhibit (or contents thereof) with co-counsel in the *Petitta* matter” yet included it in its motion nonetheless.
4. Counsel for 3M raised the same type of unfounded allegations on January 30, 2019, though did not resort to filing a baseless motion to hold Plaintiffs’ attorneys in contempt and sanction them. See attached Exhibit A (Dkt. 1728, Hulse Letter, January 30, 2019) Defendants claimed to be “continuing to investigate how this apparent improper disclosure occurred.” Plaintiffs responded to 3Ms letter the same day, assuring Defendants no improper disclosure of the “Bair Paws” document was made, and pointed Defendants to the publicly available transcripts which contain references to both Bair Paws and the fact that Bair Paws can be used when intraoperative warming [with Bair Hugger] is contraindicated (aortic cross-clamp, orthopedic cases). See attached Exhibit B (Dkt. 1729, Zimmerman Letter, January 30, 2019).
5. In its Motion for Contempt, 3M states, “on March 19, 2019, MDL Counsel entered appearances for Mr. Petitta, objected to the entry of the protective order, and demanded production of all documents produced by Defendants in the MDL (and then some) with no protection whatsoever.” This is also false. I personally participated in meet and confer efforts via telephone on the substance of a protective order.

FURTHER THIS AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
AFFIANT

SWORN TO AND SUBSCRIBED before me on the 10<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
Notary Public, State of Texas

KIMBERLY BLACK  
\_\_\_\_\_  
Notary's printed name:

My commission Expires: 03-07-2021

